

Basis and Purpose - R 211

The statutory authority for this rule is found at subsections 12-43.4-202(2)(b), 12-43.4-202(3)(a), 12-43.4-202(3)(b)(IX), and 12-43.4-202(4)(b) and sections 12-43.4-103, 12-43.4-104, and 12-43.4-501, C.R.S.. The purpose of this rule is to clarify that existing Medical Marijuana Businesses may apply to convert a Medical Marijuana Business License to a Retail Marijuana Establishment License or may apply to obtain one additional license to operate a Retail Marijuana Establishment. It is important to note that the State Licensing Authority considers each license issued as separate and distinct. Each license, whether it is in the same location or not, is fully responsible to maintain compliance with all statutes and rules promulgated regardless of whether or not they are located in a shared address.

A Medical Marijuana Business may only obtain one Retail Marijuana Establishment License, whether it converts the Medical Business License or obtains a Retail Marijuana Establishment License, for each Medical Marijuana Business License it holds. In order to ensure all Retail Marijuana and Retail Marijuana Product are tracked in MITS and as a condition of licensure, a Medical Marijuana Business must declare in MITS all Medical Marijuana and Medical Marijuana Infused-Product that are converted for sale as Retail Marijuana or Retail Marijuana Product prior to initiating or allowing any sales. This declaration may be made only once, in part, due to the excise tax issues that may be implicated if a Licensee makes multiple conversions from Medical Marijuana or Medical Marijuana-Infused Product to Retail Marijuana or Retail Marijuana Product.

The State Licensing Authority received several comments from stakeholders who requested lower fees for Medical Marijuana Businesses that were either converting a Medical Marijuana Business license to a Retail Marijuana Establishment license or obtaining an additional Retail Marijuana Establishment license while retaining the existing Medical Marijuana Business license. The adopted permanent regulations reflect changes to address this concern. Under the rules as adopted Medical Marijuana Businesses that apply to convert to a Retail Marijuana Establishment license will be required to pay an application fee, but no license fees will be charged until such time as the renewal fees would have been due under the Medical Marijuana Business license term. The Retail Marijuana Establishment license, if approved, would assume the balance of the license term from the Medical Marijuana Business license and have the same expiration date.

The rule also establishes a means by which to manage the overall production of retail marijuana. This rule is necessary to ensure there is not significant under or over production, either of which will increase incentives to engage in diversion and facilitate the continuation of the sale of illegal marijuana. The Division intends to replace this rule with a permanent production management system in the spring or summer of 2014.

R 211 – Conversion - Medical Marijuana Business to Retail Marijuana Establishment

- A. Medical Marijuana Business Applying for a Retail Marijuana Establishment License. A Medical Marijuana Business in good standing or who had a pending application as of December 10, 2012 that has not yet been denied, and who has paid all applicable fees may apply for a Retail Marijuana Establishment license in accordance with the Retail Code and these rules on or after October 1, 2013. A Medical Marijuana Business meeting these conditions may apply to convert a Medical Marijuana Business license to a Retail Marijuana Establishment license or may apply for a single Retail Marijuana Establishment of the requisite class of license in the Medical Marijuana Code for each Medical Marijuana Business License not converted.
- B. Retail Marijuana Establishment Expiration Date.
 - 1. A Medical Marijuana Business converting its license to a Retail Marijuana Establishment license shall not be required to pay a license fee at the time of application for conversion.

2. If a Medical Marijuana Business licensee is scheduled to renew its license during the processing of its conversion to a Retail Marijuana Establishment license, the Medical Marijuana Business must complete all renewal applications and pay the requisite renewal licensing fees.
3. A Retail Marijuana Establishment license that was fully converted from a Medical Marijuana Business license will assume the balance of licensing term previously held by the surrendered Medical Marijuana Business license.

C. Retail Marijuana Establishment Licenses Conditioned

1. It shall be unlawful for a Retail Marijuana Establishment to operate without being issued a Retail Marijuana Establishment license by the State Licensing Authority and receiving all relevant local jurisdiction approvals. Each Retail Marijuana Establishment license issued shall be conditioned on the Licensee's receipt of all required local jurisdiction approvals and licensing, if required.
2. Each Retail Marijuana Establishment license issued shall be conditioned on the Medical Marijuana Business' declaration of the amount of Medical Marijuana or Medical Marijuana-Infused Product it intends to transfer from the requisite Medical Marijuana Business for sale as Retail Marijuana or Retail Marijuana Product. A Licensee that converts to a Retail Marijuana Establishment shall not exercise any of the rights or privileges of a Retail Marijuana Establishment until such time as all such Medical Marijuana and Medical Marijuana-Infused Product are fully transferred and declared in the MITS system as Retail Marijuana and Retail Marijuana Product. *See also*, Rule R 309 – Marijuana Inventory Tracking Solution (MITS).

- D. One-Time Transfer. Once a Retail Marijuana Establishment has declared Medical Marijuana and Medical Marijuana-Infused Product as Retail Marijuana or Retail Marijuana Product in MITS and begun exercising the rights and privileges of the license, no additional Medical Marijuana or Medical Marijuana-Infused Product can be transferred from the Medical Marijuana Business to the relevant Retail Marijuana Establishment at any time.

E. Production Management

1. Applicability. Paragraph E of this rule shall apply to all Retail Marijuana Store or Retail Marijuana Product Manufacturing Facility licenses granted or renewed prior to July 1, 2014.
2. Additional Application Disclosures.
 - a. At the time of application for a Retail Marijuana Store license an Applicant must designate the Medical Marijuana Center license intended to be used to obtain the Retail Marijuana Store license, whether or not that license will be converted, by providing its business license number.
 - b. At the time of application for a Retail Marijuana Products Manufacturing Facility license an Applicant must designate the Medical Marijuana Infused-Products Manufacturing Business license intended to be used to obtain the Retail Marijuana Products Manufacturing license, whether or not that license will be converted, by providing its business license number.
3. Production Management.

- a. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 1 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 3,600 plants in aggregate at any one time.
 - b. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 2 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 6,000 plants in aggregate at any one time.
 - c. If the Medical Marijuana Center designated by an Applicant for a Retail Marijuana Store License was a Type 3 Center, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Store may not cultivate more than 10,200 plants in aggregate at any one time.
 - d. If the Medical Marijuana Infused-Products Manufacturing Business designated by an Applicant for a Retail Marijuana Products Manufacturing License had an Optional Premises Cultivation associated with it, then all of the Retail Marijuana Cultivation Facility Licenses associated with that Retail Marijuana Products Manufacturing License may not cultivate more than 1,000 plants in aggregate at any one time.
4. Industry-wide Adjustments. The State Licensing Authority, at its sole discretion, may adjust any of the plant limits described in paragraph E(3) of this rule on an industry-wide aggregate basis for all Retail Marijuana Establishments subject to that limitation.
5. Application for Additional Plants.
 - a. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if the associated Medical Marijuana Infused-Products Manufacturing Business had previously received a waiver from the Division to cultivate more than 1,000 medical marijuana plants. In its waiver application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its receipt of a waiver for its Medical Marijuana Infused-Products Manufacturing Business and must provide any other information requested to aid the Division in its evaluation of the waiver application. If granted, the Retail Marijuana Products Manufacturing Facility will be permitted to grow the same number of plants that the Medical Marijuana Infused-Products Manufacturing Business is permitted to grow.
 - b. A Retail Marijuana Products Manufacturing Facility may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule based upon its demonstrated business needs. In its application to the Division, the Retail Marijuana Products Manufacturing Facility must provide sufficient documentation evidencing its business need for additional production capacity to meet the requirements of potential or existing contracts with licensed Retail Marijuana Stores for the purchase of Retail Marijuana Product and must provide any other information requested to aid the Division in its evaluation of the waiver application.
 - c. A Retail Marijuana Store may apply to the Division for a waiver of the plant limit described in paragraph E(3) of this rule if it can provide documentation evidencing that it is selling at

least 85% of what it is permitted to cultivate under its current plant count restriction and any other information requested to aid the Division in its evaluation of the waiver application. If a Retail Marijuana Store or Retail Marijuana Products Manufacturing Facility waiver application is approved by the Division, then the Retail Marijuana Store will:

1. Be permitted to cultivate no more than 6,000 plants in aggregate at any one time if it was previously permitted to cultivate less than 6,000 plants in aggregate at any one time, provided that it pays an extended plant fee of \$5,000.00.
2. Be permitted to cultivate no more than 10,200 plants in aggregate at any one time if it was previously permitted to cultivate less than 10,200 plants in aggregate at any one time, provided that it pays an extended plant fee of \$5,250.00.